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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/828,689	04/21/2004	Gary W. Little	RAR531.02	6120
29762	7590	10/22/2004	EXAMINER	
RYAN & ENGNATH 8469 N. MILLBROOK AVENUE, SUITE 104 FRESNO, CA 93720			HWU, JUNE	
			ART UNIT	PAPER NUMBER
			1661	
DATE MAILED: 10/22/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/828,689

**Applicant(s)**

LITTLE ET AL.

**Examiner**

June Hwu

**Art Unit**

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

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## **DETAILED ACTION**

### **Drawings**

The drawings have been approved.

### **Objection to the Disclosure**

#### **37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

#### **35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

In plant application filed under 35 U.S.C. 161, the requirements of 35 U.S.C. 112 are limited.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164

(reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

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In plant applications filed under 35 U.S.C. 161, the requirements of 35 U.S.C. are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 37 CFR 1.163(a) because the specification presents less than a full and complete botanical description and the characteristics which distinguish over related known varieties.

More specifically:

- A. Page 1, line 14, the specific epithet of the instant cultivar is misspelled and should be changed to read -- *persica* --.
- B. The specification does not "particularly point out where the variety of plant has been asexually reproduced". Correction is required.
- C. Applicants should set forth in the specification that the claimed cultivar is stable and reproduces true to type in successive generations of asexual reproduction.
- D. Age of the observed plant should be disclosed in the specification. Correction is required.
- E. Page 5, line 7, the recitation "Many in number" is vague and does not quantitatively describe the number of lenticels per given area.

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- F. Page 6, line 4, the recitation "Pl.20 K5" should be changed to read -- Pl.20 K5 --.
- G. Applicants should set forth in the specification the lenticels' color designation with reference to the employed color chart.
- H. Applicants should set forth in the specification the leaf base shape.
- I. Applicants should set forth in the specification the number of glands per leaf.
- J. Page 6, line 15, the recitation "(Viridine Lustic)" does not correspond with the Dictionary of Color, which describes "Pl. 7 L7" as "Maroon". Clarification is necessary.
- K. Page 7, line 3, the recitation "Pl.3 13" is unclear because it does not exist in the Dictionary of Color. It appears the applicants may be referring to "Pl.3 I3". Clarification and correction are necessary.
- L. Page 7, line 6, the recitation "Pl. 7 12" is unclear because it does not exist in the Dictionary of Color. Clarification and correction are necessary.
- M. Page 7, line 9, the recitation "Pl..5 J67" is unclear because it does not exist in the Dictionary of Color. It appears the applicants may be referring to "Pl.5 J7". Clarification and correction are necessary.

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N. Page 7, line 10, the term "Pistol" appears to be a typographic error and should be changed to read -- Pistil --.

O. Applicants should set forth in the specification the general color designation of the pollen.

P. Applicants should set forth in the specification the base shape and average weight of the fruit.

Q. Page 8, line 8, the recitation "Ground color - Varies to less than 35 to 40%" is unclear because the ground color is not given. Clarification is necessary.

R. Applicants should set forth in the specification the skin's surface texture.

S. Applicants should set forth in the specification the flesh's fibers and aroma.

T. Applicants should set forth in the specification the kernel's shape, average size and color designation with reference to the employed color chart.

U. Page 9, line 8, the recitation "Use - For processing" is vague. Clarification is necessary.

V. Page 9, line 9, the recitation "Shipping quality - good" is vague and does not sufficiently describe the degree of firmness at time of harvest and refrigeration of the fruit.

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- W. Applicants should set forth in the specification the keeping quality of the fruit.
- X. Applicants should positively quantify known characteristics of the fruit of the instant variety using established horticultural methods of measure common to the crop in question such as percent soluble solids (Brix), titratable acidity, and penetrometer firmness at harvest.
- Y. If additional information is available relative to plant/fruit disease and pest resistance/susceptibility such should be set forth in the specification or if not observed state – none observed --.

The above listing may not be complete. Applicants should carefully compare the claimed plant with the botanical descriptions set forth in the specification to ensure completeness and accuracy and to distinguish the plant within this expanding market class. Any further botanical information should be imported into the specification, as should any additional or corrected information relative to same.

### **Claim Rejection**

#### **35 USC § 112, 1st and 2nd Paragraphs**

Claim 1 is rejected under 35 U.S.C. 112, first and second paragraphs as not being supported by a clear and complete botanical description of the plant for reasons set forth in the Objection to the Disclosure Section above.

### **Future Correspondence**

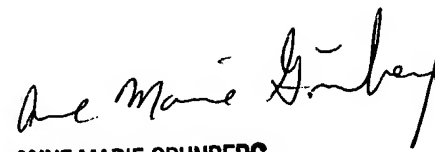
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to June Hwu whose telephone number is (571) 272-0977. The Examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached on (571) 272-0811. The fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JH

  
**ANNE MARIE GRUNBERG**  
**PRIMARY EXAMINER**